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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JULIAN C., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

AMBER I.,

Defendant and Appellant.

D044626

(Super. Ct. No. J515358)

APPEAL from orders of the Superior Court of San Diego County, Julia Craig
Kelety, Judge. Affirmed.

Sixteen-year-old Amber I. (Mother) appeals the juvenile court's dispositional order
declaring her infant son, Julian C., a dependent and removing him from her custody. She

contends there is insufficient evidence to support the removal (Welf. & Inst. Code, § 361, subd. (c)(1)),¹ or the underlying jurisdictional finding (§ 300, subd. (b)), and the court erred by admitting in this dependency proceeding her psychological evaluation from her own dependency proceeding file. We affirm.

I. BACKGROUND

In March 2004, days after Julian's premature birth, the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition alleging Mother "had a mental illness including Depressive Disorder and Oppositional Defiant Disorder which rendered her incapable of providing regular care for [Julian] as evidenced by her lack of impulse control, aggressive behavior, limited capacity to parent [Julian] and her unwillingness to obtain counseling and parenting to assist her in the transition to motherhood." Julian's presumed father is Rene C. (Father), who is three years older than Mother.

Julian was detained in the hospital, then in a foster home. At the combined jurisdictional and dispositional hearing on May 6 and 17, 2004, the court made a true finding on the petition, placed Julian in a foster home, and gave the social worker discretion to place him with Mother at the Door of Hope. Julian's counsel, who argued in favor of juvenile court jurisdiction and removal from Mother's custody, concurred with the Door of Hope placement.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise specified.

In support of the court's true finding on the petition, it cited Mother's psychological evaluation from her dependency file and related factors including her limited schooling, slow progress in school, lack of a job and job skills, lack of housing other than with her grandmother, G. B. (Great-grandmother),² lack of future plans other than living with Father, and "serious lack of maturity." As an example of her immaturity, the court noted the past autumn Mother left town with Father, without telling Great-grandmother, any family member, the social worker, or anyone else where she was going. It also found the testimony of Great-grandmother and Father's mother (Grandmother) not credible, observing they minimized serious matters and "[i]t seemed like the family was kind of working together to paint a false picture of family harmony and family support." Additionally, the court noted Mother ignored Great-grandmother's advice not to get pregnant and to attend therapy, showing Great-grandmother was unable to positively influence Mother. The court also expressed its concern about allegations of Father's attempts to control Mother, which resulted in a temporary restraining order against him, and were warning signs of abuse.

The court found, by clear and convincing evidence, Julian would be in danger were he not removed from Mother's custody and reasonable efforts made to eliminate the need for removal.

Julian apparently began an extended visit with Mother at the Door of Hope on August 2, 2004. At the November 15 six-month review hearing, the juvenile court placed

² We refer to her as Great-grandmother because of her relationship to Julian.

Julian with her. Mother's contention the court erred by removing Julian's custody from her (§ 361, subd. (c)(1))³ is therefore now moot and we do not discuss that contention.

II. DISCUSSION

A. THE PSYCHOLOGICAL EVALUATION

At the May 6, 2004 hearing, the Agency requested the court take judicial notice of Mother's dependency file. It also sought admission of Julian's March 8, 2004 detention report and its attachments, one of which was Mother's July 24, 2003 psychological evaluation by Christopher Carstens, ordered in her own dependency case. Mother's attorney objected to admission of the evaluation and the request for judicial notice, citing Evidence Code section 352 and "Larry S.," an apparent reference to *Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195 (*Laurie S.*). The court overruled counsel's objection, admitted the evaluation, and granted the request for judicial notice.

Relying on *Laurie S.*, Mother contends her right to privacy precluded use of her psychological evaluation prepared in her dependency proceeding to support jurisdiction over Julian and there were less intrusive means of obtaining information needed to assess the risk to him. She argues admission of the evaluation was a miscarriage of justice requiring reversal.

³ Section 361, subdivision (c)(1) proscribes a dependent child's removal from parental custody unless "[t]here is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' . . . physical custody."

In *Laurie S.* this court held the juvenile court could not order a parent to undergo a psychological evaluation and then use the evaluation to assume jurisdiction in the same dependency proceeding. The *Laurie S.* court did not address the parent's challenge to the introduction of her psychological evaluations from previous dependencies. (*Laurie S. v. Superior Court, supra*, 26 Cal.App.4th at pp. 197, 203.) The court here did not order that Mother be evaluated; the evaluation already existed. *Laurie S.* is therefore inapposite.

Mother argues "as a dependent child, [she] held privacy rights to information in her file being disclosed to the public" and it is fundamentally unfair to use the evaluation against her now when it was obtained to assist her in her own dependency. The evaluation was not disclosed to the public; in this proceeding Julian's protection is paramount, and Mother's evaluation was used for that purpose.

Finally, Mother asserts the psychotherapist-patient privilege precluded admission of the evaluation. That privilege does not apply, however, when the court appoints a psychotherapist to examine the patient. (Evid. Code, § 1017, subd. (a); see *In re Eduardo A.* (1989) 209 Cal.App.3d 1038, 1041-1042.) Furthermore, Mother's evaluation expressly states Dr. Carstens told Mother he "would be providing written and verbal information about this case to the court and to other professionals" and was required to "report any suspected child abuse, adult abuse, or serious risk to harm self or others." According to the evaluation, Mother "read aloud an informed consent document, written at the fifth grade reading level, and signed it after being given a chance to ask questions."

The court did not err by taking judicial notice of and considering the psychological evaluation.⁴

B. THE JURISDICTIONAL FINDING

1. THE PSYCHOLOGICAL EVALUATION

Dr. Carstens evaluated Mother's condition when she was 15 and one-half years old. As background information, he noted the following: Her family's Child Protective Services history included at least 40 reports of neglect, physical abuse, emotional abuse, caretaker incapacity, and sexual abuse; although most of the reports were unsubstantiated or inconclusive, a number were substantiated.⁵ In April 2003 Mother was detained at Polinsky Children's Center (Polinsky) following a report she was involved in a confrontation with her uncle, during which he struck her and split her lip.⁶ Before her detention, she was not attending high school regularly and had learning disabilities.⁷ She occasionally left home, reportedly to live with an older boy, apparently Father. After the detention, Great-grandmother described her as combative and occasionally violent.

⁴ Because of our conclusion, we need not address the Agency's assertion Mother waived her right to raise this issue.

⁵ Of the 43 reports noted in Julian's jurisdictional report, in 24 cases no resolution was stated, in six cases there was no investigation, and of the remainder, seven reports were inconclusive, three were unfounded, and three were substantiated.

⁶ This confrontation occurred at Great-grandmother's home, at which Mother was living.

⁷ According to the social worker, by April 2004 Mother was ranked 597 out of 602 students in her special education curriculum.

About a year before the detention, Mother inflicted cuts on herself following her breakup with a boyfriend and was involved in counseling. A psychiatrist at Polinsky believed she was depressed and recommended medication.

In her interview with Dr. Carstens, Mother denied any abuse or problems in her home. She admitted having been suspended from school three times for fighting and said she had few friends. She acknowledged having cut herself three years earlier, when she was upset, and said she briefly saw a counselor then and at Polinsky. She denied any emotional problems or any symptoms of depression. Great-grandmother told Dr. Carstens Mother could not control her temper; had five-minute tantrums about twice a week; and screamed, yelled, and threw things.⁸

Dr. Carstens diagnosed Mother's condition as a depressive and oppositional defiant disorder. He also noted the following: Mother was an unreliable historian as "[s]he consistently sought to present a glowing picture of herself and her family situation [and] had a strikingly limited ability to accept and deal with negative feedback." She "had limited verbal skills[,] a great deal of trouble dealing with frustration and a limited set of skills for working through interpersonal problems." She "had academic problems, and appear[ed] to have a specific learning disability" relating to mathematics. Although Dr. Carstens believed her apparent depression should be treated in therapy, he predicted

⁸ At the jurisdictional and dispositional hearing, Great-grandmother denied being interviewed by Dr. Carstens, but then said she had told him Mother had "a temper tantrum once in a blue moon" and she had called the police once when they had "a heated argument."

this would be a challenge in view of her limited verbal skills, denial of her problems, and tendency to blame others. He recommended a psychiatric consultation and compensatory educational services and, if her impulsive behavior increased or she became assaultive so that she was beyond Great-grandmother's control, consideration of placement in a group home.

2. OTHER EVIDENCE

Mother lived with Great-grandmother for most of her life and was placed with her as a juvenile court dependent. Mother was detained at Polinsky in April 2003, and during her stay a doctor recommended she receive medication for depression. Mother returned to Great-grandmother's home by June.

On September 2003, Mother left Great-grandmother's home with Father, who was 18 years old, and spent more than a week with him in Tijuana. At the social worker's suggestion, Great-grandmother obtained a restraining order against Father. In her application, Great-grandmother stated Father had taken Mother across the border where Grandmother owned property, but Grandmother refused to say where they were; and Father was controlling and demanding with Mother, telling her how to dress, isolating her from her friends, and forbidding her to attend family functions. The social worker also called Grandmother, who refused to tell her where Mother was and falsely stated Mother left Great-grandmother's home because she was sexually abused.

At the jurisdictional and dispositional hearing, Great-grandmother testified she was not sure Grandmother understood her inquiries into Mother's whereabouts, as Grandmother did not speak English well and Great-grandmother did not speak Spanish,

and Grandmother said she did not know where Mother was but would look for her. Great-grandmother testified she did not believe a restraining order was necessary; "there [wa]s stuff in [the application she] didn't say"; and at Julian's birth, Father was very loving, caring, and supportive of Mother. Great-grandmother admitted, however, that Father told Mother he did not like some of her friends and did not want her to talk to them; he did not want her to attend a birthday celebration for Great-grandmother's mother; and he wanted her to wear loose clothes. Grandmother testified she left a telephone message for the social worker but did not speak with her until the hearing, denied Father took Mother to Tijuana, and denied knowing Mother was missing from Great-grandmother's home.

Mother concealed her pregnancy from her social worker at Great-grandmother's behest, but later denied Great-grandmother had told her to do so, and Great-grandmother denied she encouraged concealment of the pregnancy. Mother missed several prenatal appointments and refused to attend prenatal classes. She attended only two or three therapy sessions, the last when she was about seven months pregnant, did not feel as though it helped her, and refused further therapy even though the social worker arranged transportation and one counseling office was only a few blocks away.⁹ Great-grandmother rejected offers of in-home parenting and counseling services, disagreed with the social worker's statement Mother needed counseling, and made it clear she was not in favor of psychotropic medication for Mother. Mother completed a parenting class after

⁹ After the petition was filed, Mother said she was willing to attend therapy.

initially refusing to attend; however, the class related to children four years and older, not newborns. While she had helped care for her younger half-sister, she had limited parenting skills and limited understanding of the developmental needs of infants.

Great-grandmother was evicted from her residence shortly before Julian's birth and Mother's social worker was unable to find the family, who were living in motels and in the home of Great-grandmother's own mother, where they slept on the floor.¹⁰ The day of Julian's birth, Mother stated he would change her life by keeping her out of trouble because she would have to take care of him, and she would no longer fight at school, which had led to her expulsion. She said she now had someone to love and described her wish to take Julian places such as Fun-4-All, Chuck E. Cheese, and the beach, and give him a good home. Although Grandmother wanted Mother and Julian to live with her, Mother believed this was for the welfare benefits.

Mother visited Julian on March 16, 2004, did not appear for two subsequent visits, attended the next three visits, did not appear for a visit on April 9, and missed one or two visits after that.¹¹ In the short time remaining before the hearing, Mother was more consistent in her visitation and was generally attentive and loving with Julian.

¹⁰ Great-grandmother denied she was evicted, claiming she left the home because the landlord raised the rent and the area was unsafe.

¹¹ In all, she missed eight to 10 visits.

At the time of the hearing, Mother was attending school and living with Great-grandmother, who was supporting her.¹² Mother was not working and had never worked. She wanted to continue living with Great-grandmother and did not understand why the Door of Hope, where she could live with Julian, required her to make a one-year commitment. She wanted to resume her relationship with Father and denied he tried to control her. Father, in custody at the time of the hearing, appeared to have little interest in Julian. According to Great-grandmother, Mother had learned to control her temper and there had been no tantrums for a few months.

The juvenile court took judicial notice of Mother's dependency file. In a December 2003 report in that file, Mother's social worker detailed Mother's September flight to Mexico with Father, Grandmother's lack of cooperation in ascertaining Mother's whereabouts, Great-grandmother's resistance to following through with individual therapy for Mother, and Great-grandmother's description of the ways in which Father tried to control Mother. A May 2003 report describes Mother's combativeness with Great-grandmother, including kicking her and swinging at her with a frying pan, breaking two of her fingers.

3. CONTENTIONS AND CONCLUSION

Mother contends the jurisdictional finding is unsupported by substantial evidence. She argues her depression was not a mental illness creating a substantial risk of serious harm to Julian within the meaning of section 300; the depression diagnosis was more

¹² Great-grandmother had moved into a new home and the Agency had approved it.

than a year old;¹³ and her immaturity and lack of independence posed little risk to Julian because she would receive services in her own dependency and she had family support.

Section 300, subdivision (b) allows a dependency where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse." The Agency had the burden of showing, by a preponderance of the evidence,¹⁴ specifically how Julian had been or would be harmed. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) "If there is any substantial evidence to support the findings of the juvenile court, a reviewing court must uphold the trial court's findings. All reasonable inferences must be in support of the findings and the record must be viewed in the light most favorable to the juvenile court's order. [Citations.]" (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 168.)

The record does not support Mother's claim that family support would mitigate her immaturity and lack of independence. Mother was raised by Great-grandmother because her own mother abused drugs and her father was incarcerated. Although Great-grandmother is to be commended for supporting Mother, she reinforced Mother's refusal to take advantage of the services offered to her and did not consistently maintain a safe, stable home for Mother. Father, Great-grandmother, and Grandmother were uncooperative with the social worker. Mother had a simplistic view of parenting an

¹³ It was not quite 10 months old.

¹⁴ The court here made its jurisdictional finding by clear and convincing evidence.

infant, had not completed a parenting course that might remedy this, and missed visits with Julian. She wished to resume her relationship with Father despite his controlling ways and apparent lack of interest in Julian. To the extent Mother was willing to take advantage of the services offered in her own dependency, they were aimed at protecting her, not Julian, and there was no guarantee those services would continue as long as he needed them.

Although Dr. Carstens's diagnosis of Mother's condition, which consists of depression and oppositional defiant disorder, occurred almost 10 months before the hearing, Mother denied her problems and had not cooperated with treatment. His observation that she "had a strikingly limited ability to accept and deal with negative feedback" and "a great deal of trouble dealing with frustration," as well as her history of temper tantrums, fighting, violence with Great-grandmother, and missed visits, are troublesome in the context of her ability to care for Julian. "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, italics omitted.) Nevertheless, when a child is of tender years, a lack of adequate supervision and care may pose "an inherent risk to [the child's] physical health and safety." (*Ibid.*) Even were we to

disregard the psychological evaluation, the record contains substantial evidence supporting the jurisdictional finding under section 300, subdivision (b).

DISPOSITION

The orders are affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J